

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

KENYAN ROGERS,

Petitioner,

v.

BARRY DAVIS,

Respondent,

Case No. 2:07-CV-11164

HON. PAUL D. BORMAN

UNITED STATES DISTRICT COURT

**ORDER DENYING THE MOTION FOR A NEW TRIAL**

Before the Court is habeas petitioner Kenyan Rogers's motion for a new trial, in which he requests an evidentiary hearing on his ineffective assistance of counsel claims. For the reasons stated below, the motion is denied without prejudice.

If a habeas petition is not dismissed at a previous stage in the proceeding, the judge, after the answer and the transcript and record of state court proceedings are filed, shall, upon a review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is required. If it appears that an evidentiary hearing is not required, the judge shall make such disposition of the petition as justice shall require. 28 U.S.C. foll. § 2254, Rule 8(a); *Hence v. Smith*, 49 F. Supp. 2d 547, 549 (E.D. Mich. 1999). It is within the district court's discretion to determine whether a habeas petitioner is entitled to an evidentiary hearing. *Brofford v. Marshall*, 751 F. 2d 845, 853 (6<sup>th</sup> Cir. 1985). An evidentiary hearing is not required where the record is complete or if the petition raises only legal claims that can be resolved without the taking of additional evidence. *United States v. Sanders*, 3 F. Supp. 2d 554, 560 (M.D. Pa. 1998).

The motion for an evidentiary hearing will be denied without prejudice because the Court

has not yet reviewed the petition, the answer and the state court record from respondent, and petitioner's reply brief. Until the Court reviews these materials, the Court is unable to determine whether an evidentiary hearing on petitioner's claims is needed. Following review of these materials, the Court will then determine whether an evidentiary hearing is necessary to resolve petitioner's claims. The Court will therefore deny petitioner's motion for an evidentiary hearing without prejudice.

Accordingly, the Court **DENIES** the motion for a new trial [Court Dkt. Entry # 4]. The Court will reconsider petitioner's motion if, following review of all of the pleadings and Rule 5 materials, the Court determines that an evidentiary hearing is necessary.

**SO ORDERED.**

s/Paul D. Borman  
PAUL D. BORMAN  
UNITED STATES DISTRICT JUDGE

Dated: March 10, 2008

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on March 10, 2008.

s/Denise Goodine  
Case Manager